

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

SHARINA SCOTT

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:03CV213-WJG-RHW

COMMISSIONER OF SOCIAL SECURITY

DEFENDANT

**ORDER DENYING MOTION TO RECONSIDER**

Before the Court is Plaintiff's [20] Motion to Reconsider the Court's Report and Recommendation that Plaintiff's claim be dismissed for failure to file a timely complaint from the denial of her social security disability claim. The undersigned entered proposed findings of fact and recommendation that the Commissioner's Motion to Dismiss be granted. Plaintiff had not filed a response to the Motion to Dismiss. Plaintiff's counsel asserts that a response was not filed due to difficulties caused by Hurricane Katrina. The Motion to Dismiss was filed seven weeks after the hurricane. Plaintiff further argues that she was granted an extension until February 3, 2003, and suggests that the 60-day limitations period for filing a complaint from the Commissioner's final decision should be equitably tolled.

The undersigned finds that Plaintiff's Motion to Reconsider should be denied. In her Motion to Reconsider, Plaintiff concedes that the complaint was filed on March 13, 2003, or 38 days after the February 3, 2003, extension granted by the Appeals Council. Regardless of whether the 60-day limitation is construed as jurisdictional, the fact remains that Plaintiff failed to comply with the 60-day limitation period. *See Fletcher v. Apfel*, 210 F.3d 510, 513 (5th Cir. 2000); *Flores v. Sullivan*, 945 F.2d 109 (5th Cir. 1991). Thus, absent equitable tolling, the Plaintiff's complaint is time-barred. *See Fletcher*, 210 F.3d at 513; *Barrs v. Sullivan*, 906 F.2d

120, 122 (5th Cir. 1990). The Court concludes that Plaintiff has not provided any basis for equitable tolling of the 60-day limitation period.

IT IS THEREFORE ORDERED AND ADJUDGED that Plaintiff's [20] Motion to Reconsider the Findings of Fact and Recommendations is DENIED.

SO ORDERED, this the 27th day of September, 2006.

s/ Robert H. Walker  
UNITED STATES MAGISTRATE JUDGE